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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/668,365      | 09/24/2003  | Anthony G. Gutierrez | CHPPM 02-58 02      | 4780             |

27370 7590 06/22/2004

OFFICE OF THE STAFF JUDGE ADVOCATE  
U.S. ARMY MEDICAL RESEARCH AND MATERIEL COMMAND  
ATTN: MCMR-JA (MS. ELIZABETH ARWINE)  
504 SCOTT STREET  
FORT DETRICK, MD 21702-5012

|          |
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| EXAMINER |
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BEISNER, WILLIAM H

|          |              |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1744

DATE MAILED: 06/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                |                                       |  |
|------------------------------|--------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/668,365  | Applicant(s)<br>GUTIERREZ, ANTHONY G. |  |
|                              | Examiner<br>William H. Beisner | Art Unit<br>1744                      |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-20 is/are allowed.
- 6) ☒ Claim(s) 1-5,8,9,15 and 16 is/are rejected.
- 7) ☒ Claim(s) 6,7 and 10-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 8, 9, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Danssaert et al.(US 5,525,300).

With respect to claim 1, the reference of Danssaert et al. discloses a thermocycler device that includes a case (See Figure 1) with a rotary plate (top surface of the case). The rotary plate includes a plurality of heating blocks (2, 17, 18, 19) and at least one vessel movable relative to the heating blocks and adapted to contact at least two heating blocks (See robotic arm (20) which carries plural reaction vessels between the plural blocks and column 3, lines 45-55).

With respect to claims 2 and 3, the case includes outside controls (15 and 16).

With respect to claim 4, the plate with plural openings for holding plural vessel that forms part of the robotic arm is considered to meet the cassette claim limitation.

With respect to claim 5, the blocks are arranged in a geometric pattern at 90 degree intervals (See Figure 1).

With respect to claims 8 and 9, the disclosed use of two separate motors for moving the robotic arm would include the use of a plurality of wheels for rotating the vessels between the heater blocks (See column 5, lines 42-45)

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With respect to claim 15, the device is operated by a controller and would inherently include a power source (See column 5, lines 29-41).

With respect to claim 16, the heating blocks include a heating source (8 or 10).

***Allowable Subject Matter***

3. Claims 17-20 are allowed.
4. Claims 6, 7, and 10-14 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter:

With respect to claims 6, 7 and 17-20, the prior art of record fails to teach or fairly suggest a thermocycler device that includes a geometric pattern of heating blocks that includes a central heating block with outside surfaces defining a hexagon and six outside heating blocks disposed around the periphery of the rotary plate in combination with the other positively recited elements of the claims.

With respect to claims 10-14 and 17-20, the prior art of record fails to teach or fairly suggest a thermocycler device that includes “tri-lobed” wheels for holding three vessels carrying cassettes in combination with the other positively recited elements of the claims.

***Conclusion***

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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The references of Wheatcroft (US 6,448,066) and Tamaoki et al.(JP 06-277036) are cited as prior art thermocyclers that include heating blocks and means for moving vessels relative to the heating blocks.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
William H. Beisner  
Primary Examiner  
Art Unit 1744

WHB